

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *Cg* D.C.  
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THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

MICHAEL JOSEPH KIRKPATRICK,

Petitioner,

vs.

T.C. OUTLAW,

Respondent.

X  
X  
X  
X  
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X  
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X  
X

No. 03-2802-M1/P

ORDER DENYING MOTIONS TO AMEND AND FOR RECONSIDERATION

Petitioner Michael Joseph Kirkpatrick, Bureau of Prisons inmate registration number 20806-018, an inmate at the Federal Correctional Institution in Memphis ("FCI-Memphis"), filed a habeas petition pursuant to 28 U.S.C. § 2241 on October 28, 2003, along with a supporting memorandum. Kirkpatrick paid the habeas filing fee on December 9, 2003. The petition alleged that Kirkpatrick was denied the assistance of counsel on direct appeal. The Court issued an order on April 28, 2004, denying the petition and certifying that an appeal would not be taken in good faith. Judgment was entered on April 28, 2004. Kirkpatrick filed a motion for reconsideration on May 18, 2004, which the Court construed as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)

and, as so construed, denied the motion in an order issued on December 28, 2004.

In the meantime, on December 16, 2004, Kirkpatrick filed a document, entitled "Application for Writ of Original Habeas Corpus." On January 19, 2005, Kirkpatrick filed a document, entitled "Final Motion for Reconsideration in Knowledge of the Wrong (and) Failure to Grant the Writ of Original Habeas [sic] Corpus to Correct this Constitutional Wrong by the Pleadings Herewith." On January 21, 2005, the Clerk docketed a letter from Kirkpatrick to the Court presenting additional argument in favor of his petition. On January 26, 2005, Kirkpatrick filed a document entitled "Motion to Clarify the Change[s] and Absent Entry[s]."

In his December 16, 2004, filing, Kirkpatrick seeks to amend his habeas petition, pursuant to 28 U.S.C. § 2242 and Fed. R. Civ. P. 15. However, a motion to amend is inappropriate in this case because judgment was entered dismissing the petition on April 28, 2004. Moreover, the various factors cited by Kirkpatrick, such as the presence of a new Warden at FCI-Memphis,<sup>1</sup> do not alter the conclusion, expressed in the two previous orders, that the matters presented in this petition are not appropriate grounds for relief under 28 U.S.C. § 2241. The motion to amend is DENIED. To the

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<sup>1</sup> As Petitioner has pointed out, T.C. Outlaw is now the Warden at FCI-Memphis. The Clerk is ORDERED to correct the docket to reflect that Warden Outlaw, and not former FCI-Memphis Warden Randy Davis, is now the Respondent in this action.

extent the December 16, 2004, filing can be construed as another motion for reconsideration, it is DENIED.

In his January 19, 2005, filing, Kirkpatrick points out that the order issued on December 28, 2004, did not address his December 16, 2004, motion. The December 16, 2004, filing has been addressed in this order. Kirkpatrick also argues that it was inappropriate for his May 18, 2004, filing to be construed as a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b). In this case, however, Rule 60(b) was the only provision of the Federal Rules of Civil Procedure that was applicable, as Kirkpatrick did not file a timely motion pursuant to Fed. R. Civ. P. 59(e). The January 19, 2005, motion for reconsideration is DENIED.

In the letter filed on January 21, 2005, Kirkpatrick points out similarities between his case and that of Dr. Samuel Sheppard, who was convicted of murdering his wife in 1954. In this letter, Kirkpatrick argues that he is factually innocent of the crimes for which he has been convicted, and he also asserts various due process violations in the handling of the criminal case. Again, however, as stated in the April 28, 2004, order, this Court is unable to afford relief to Kirkpatrick on any of these matters because they pertain to the imposition of his sentence rather than its execution. 04/28/04 Order at 3-4. Moreover, although Kirkpatrick now claims that he is actually innocent, none of the

various factors he cites constitutes new evidence that was not available at the time of his trial. To the extent this letter is another motion for reconsideration, it is DENIED.

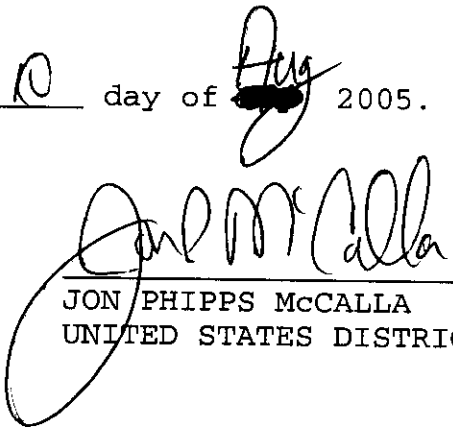
In his January 26, 2005, filing, Kirkpatrick questions why the case number is listed as "2:03-cv-02802-JPM-tmp." The designation "tmp" refers to the magistrate judge assigned to this matter. Nothing in the style in which the case number is listed on the docket sheet has any bearing on the proposed amendment filed by this Petitioner on December 16, 2004.

Next, Kirkpatrick appears to question why the judgment is listed prior to his December 16, 2004, amendment. Specifically, he contends that this fact is evidence that someone is attempting to take advantage of him. As previously noted, however, the judgment was entered on April 28, 2004, more than seven months before the December 16, 2004, motion was filed.

Finally, Kirkpatrick questions why some of the documents he recently filed were not included on a copy of the docket sheet he obtained on January 20, 2005. The date on which an item is stamped "received" by an intake clerk is not necessarily the same date it is entered on the docket, which is why each docket entry states the date on which each item was received and entered. Each document submitted by Kirkpatrick was entered on the docket no later than January 26, 2005.

For the reasons previously stated, Kirkpatrick's motions are DENIED in their entirety.

IT IS SO ORDERED this 10 day of Aug 2005.



JON PHIPPS McCALLA  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 13 in case 2:03-CV-02802 was distributed by fax, mail, or direct printing on August 12, 2005 to the parties listed.

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Michael Joseph Kirkpatrick  
FCI-MEMPHIS  
20806-018  
Federal Correctional Institute  
P. O. Box 34550  
Memphis, TN 38184--055

Honorable Jon McCalla  
US DISTRICT COURT